Thiel College and Thiel College Chapter, American Association of University Professors, Petitioner. Case 6-RC-8667

April 30, 1982

DECISION AND ORDER

By Members Fanning, Jenkins, and Zimmerman

Upon a petition filed on December 31, 1979, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on January 17, 1980, before Hearing Officer Laura A. Johnston. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 6 transferred this case to the Board for decision. Thereafter, the Employer filed a brief with the Board.

On February 20, the United States Supreme Court issued its opinion in N.L.R.B. v. Yeshiva University, in which the Court held that the full-time faculty members at that university were managerial employees excluded from coverage of the Act. Since the issue addressed by the Court in Yeshiva University is also raised in the instant proceeding, the Board, on May 22, issued a "Notice to Parties of Opportunity To Submit Statements of Position." Thereafter, the Employer filed a statement of position.

The National Labor Relations Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record, the Board finds:

1. Thiel College is a 4-year liberal arts, co-educational institution located in Greenville, Pennsylvania. Since its inception in 1866, the College has been affiliated with the Lutheran Church of America, hereinafter referred to as LCA. In 1971, the LCA granted formal recognition to it as an LCArelated college. This recognition was based on a written covenant between the College and the Western Pennsylvania-West Virginia Synod³ of the LCA. The covenant sets out the mutual expectations and obligations of the two parties including, inter alia, on the part of the College, (1) to strive for the highest degree of excellence which its resources allow; (2) to provide an "open forum for the free exchange of thought, opinion, and belief"; (3) to provide opportunities for worship; (4) to recruit Lutheran students; (5) to commit itself to understanding and resolving social problems; (6) to act in consonance with the ethical standards of the LCA; (7) to strive "for the goals of different races on the faculty and among the students, opportunties to discover the needs of the disadvantaged at home and abroad, and the acquisition of those learnings and skills necessary to act in ways which enhance the quality of human life"; and (8) to make its facilities available for church programs. The covenant also specifies, *inter alia*, that the Synod has the duties (1) to support the College "in its role as an institution of free inquiry"; (2) to encourage its youth to attend the school; and (3) to support it financially.

The financial support contributed by the Synod amounts to approximately \$135,000 a year, in an unrestricted grant, out of the Synod's \$900,000 budget. In addition, the Synod sponsors periodic fundraising drives, the next one to be held in 1983. Past drives have raised \$750,000 to \$1 million for the College. The Synod also contributes additional unrestricted moneys, which amounted to \$7,000 to \$8,000 in 1978. Finally, special restricted moneys from individual congregations can equal \$15,000 a year, and faculty grants from the Synod can vary from \$1,500 to \$10,000 yearly.

The constitution of Thiel College sets forth its institutional purpose at article I, section 2. It is to provide "Christian higher education, preparing young men and women for service in the Church and in the various professions and vocations." Further, at article III, section 1, the constitution defines the course of instruction as the customary 4year liberal arts program "including regular instruction in the Christian religion." At article I, section 4, the constitution also delineates the structure of the College's governing body. It requires that the 45-member board of trustees be composed of 24 trustees who are selected by the Synod, of whom 9 must be ministers, and 15 must be members of congregations in the Synod. Of the remaining 21 trustees, 15 are selected by the board of trustees, and 6 by the College's Alumni Association. Additional constitutional provisions state that: (1) all College property is owned by the Synod and no significant conveyance can be made without its permission; (2) if the College should cease to operate, its property would revert to the Synod; (3) the president must be a Lutheran, al-

⁴ The College's budget is approximately \$6 million a year.
⁵ Student tuition amounts to approximately 75 percent of the College's

¹ All dates herein are in 1980, unless otherwise indicated.

^{* 444} U.S. 672.

^a This Synod, or aggregation of congregations, is composed of approximately 350 congregations in this geographic area.

⁵ Student tuition amounts to approximately 75 percent of the College's operating budget. The students have access to Pennsylvania Higher Education Funds and other government moneys to assist them in making these payments. These funds constitute approximately 50 percent of the total tuition payments.

though he need not be a minister; ⁶ (4) the trustees select all of the administrative officers; and (5) the trustees must approve all nontenured faculty appointments and all grants of tenure.

According to the record testimony of Dr. John Braughler, a Lutheran pastor, a Thiel College trustee, and chairman of the religious life committee, the Synod, by controlling the board of trustees, has the ultimate decisionmaking power on campus lifestyle issues; e.g., the use of alcohol and the nature of dormitory living. Further, Dr. Louis T. Alman, a Lutheran minister and president of Thiel College, testified that while the Synod may hold a "veto power" over College policies, in the day-to-day administration of the school he is free to exercise his own judgment. In addition, Dr. Alman noted that he makes an annual report to the Synod on the College's activities.

With regard to other aspects of the College's operations, the evidence reveals that applicants for student or teaching positions need not be Lutherans. In fact, there are more enrolled students of the Roman Catholic faith than of the Lutheran persuasion. Further, teachers are informed of the school's affiliation with the LCA during the hiring process, and are asked to support the Church's goals, but are not required to sign an oath of support to the Church's mission. There are no religion courses which are required at the school. While there is a weekly 50-minute program dealing with the application of the Christian faith to total life experiences, open to the entire College community, attendance is voluntary.7 Out of the 1,000 students, 25 to 150 may attend a particular session. Further, 6 to 40 professors out of a total complement of 63 faculty members may attend, and 40 of the administrative personnel may be present. This is not a worship service, but a discussion of issues from the Christian perspective. Finally, there are religious events scheduled during the week, such as chapel and Bible study groups, which are attended by approximately 425 persons over the course of the week.

The Petitioner seeks to represent only the full-time teaching faculty employed at Thiel College at its Greenville, Pennsylvania, campus. The Employer contends that the Supreme Court's decision in N.L.R.B. v. Catholic Bishop of Chicago, which held

that Congress never intended the Board to extend the Act's coverage to church-operated schools, precludes the Board from asserting jurisdiction herein. It argues this on the ground that the pervasive role of the Synod in the life of the College requires a finding that the College is church-operated, and therefore that assertion of jurisdiction by the Board would be contrary to the will of Congress and violative of the first amendment.

At issue in Catholic Bishop was whether the Board properly asserted jurisdiction over two church-operated secondary schools. After examining the National Labor Relations Act and its legislative history, the Court held that "Congress did not contemplate that the Board would require church-operated schools to grant recognition to unions as bargaining agents for their teachers," and therefore concluded that the Board lacked jurisdiction over the schools in question.

The Supreme Court had stated previously in Tilton v. Richardson, 10 that "[t]here are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools," in deciding that the Higher Education Facilities Act of 1963 did not foster an excessive government entanglement with religion. The Court pointed out that, contrary to the situation in parochial schools, religious indoctrination is not the purpose of a college education. Thus, the Court stated that "[s]ince religious indoctrination is not a substantial purpose or activity of these church-related colleges and universities, there is less likelihood than in primary and secondary schools that religion will permeate the area of secular education."11 Indeed, in Catholic Bishop itself, the Court, quoting from Lemon v. Kurtzman, 403 U.S. 602, 616 (1971), emphasized that secondary parochial schools "involve substantial religious activity and purpose," and, quoting Mr. Justice Douglas' concurring opinion in Lemon, noted that "the admitted and obvious fact that the raison d'etre of parochial schools is the propagation of a religious faith." Id. at 628.

Accordingly, the Board in Barber-Scotia College, Inc., 12 specifically interpreted the holding in Catholic Bishop as applying only to parochial elementary and secondary schools. In that case, the Board concluded that although Barber-Scotia, a 4-year liberal arts school, had a relationship with the United Presbyterian Church, it was "primarily concerned

⁶ Only 4 individuals in the administration and faculty are ministers; while it is unclear how many persons are in administration, only 1 of the 63 professors is a minister.

The bylaws of Thiel College do, however, provide at art. VI, sec. 4, that "No faculty member shall engage in any outside undertaking, with or without pay, which shall hinder . . . regular attendance at . . . the religious services."

⁴⁴⁰ U.S. 490 (1979).

⁹ Id. at 506.

^{10 403} U.S. 672, 685 (1971).

¹¹ Id. at 687

^{12 245} NLRB 406 (1979).

with providing a secular education, rather than with inculcating particular religious values." ¹³

Barber-Scotia directly controls this case. Without question, Thiel College is associated with the Lutheran Church, as evidenced generally by the covenant between Thiel and the Synod, and specifically by its ownership of the College's property, its power to appoint most of Thiel's trustees, and its financial support of the institution. Just as clearly, however, the purpose of the school is primarily secular. The covenant provides that the Synod's expectations of the College are, among other things, that it attain the highest degree of academic excellence, that it be an open forum for the free exchange of ideas, that it commit itself to understanding and resolving social problems, and that it assist its students to act in ways which enhance the quality of human life. Also, the constitution of the College provides that its purpose is to train young people in the various vocations and professions, and that it offers as a course of studies a 4-year liberal arts program. Further, the Synod contributes only a small percentage of the College's budget. There is no requirement that students take religious courses or engage in worship. In addition, neither students nor teachers need be Lutheran, and the teachers do not have to commit themselves in writing to support the Church's mission.14 Finally, the day-to-day administration of the college is not interfered with by the Church's representatives. Therefore, we conclude that Thiel is a liberal arts college mainly concerned with providing a secular education for students of all religious backgrounds and that we are not precluded from taking jurisdiction herein.

The gross annual revenue of the College exceeds \$1 million. At least \$50,000 of that amount is received from outside the Commonwealth of Pennsylvania. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction over Thiel College.

- 2. The labor organization involved claims to represent certain employees of the Employer.
- 3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.
- 4. The Petitioner seeks to represent a unit consisting of all full-time teaching faculty, excluding all other employees, administrators, adjunct (part-time) faculty, guards, and supervisors. The Em-

ployer contends that the recent Supreme Court decision in Yeshiva University, supra, specifically excludes such faculty members from the coverage of the Act on the basis that they are managerial employees. It therefore argues that the petition must be dismissed. In the alternative, the Employer submits that departmental chairmen and members of the executive committee of the faculty council should be excluded from the unit because these positions are managerial and/or supervisory. Finally, the Employer contends that adjunct faculty members with 3 or more years of continuous service should be included in the unit.

Article II,B, of the faculty's constitution provides that:

The Faculty fills the dual and traditional roles of a legislative body and a participant in the decision-making processes of the College. Its authority in these roles is derived from powers delegated to it by the Board of Trustees.

1. LEGISLATIVE

With the approval of the Board of Trustees, the Faculty shall

- (a) enact rules for its own organization and procedure,
- (b) define the educational philosophy of the College,
- (c) establish the academic requirements for admission to and retention in the College as well as for all academic degree programs,
- (d) establish and interpret the academic policies of the College,
- (e) certify to the Board of Trustees, for approval for graduation, those students who have completed the prescribed course of study,
- (f) share with the administration and the student body in the definition, interpretation, and implementation of policies concerning student conduct and life styles.

2. ROLE IN DECISION-MAKING

With the approval of the Board of Trustees, the Faculty shall

- (a) participate in the definition of policy concerning its professional status,
- (b) participate with the Administration and Board of Trustees in the selection of the President of the College, Academic Dean, and College Pastor, and
- (c) participate with the Administration and Board of Trustees on matters dealing with long-range educational, financial, and economic planning and the growth of the institution.

¹³ Id. at 407. The Board reached a similar conclusion in College of Notre Dame, 245 NLRB 386 (1979).

¹⁴ As previously noted, there are more Roman Catholic than Lutheran students at Thiel.

The College is divided into 18 academic departments. Each department has a chairman who is elected by its members for a 3-year term. The selection of the chairman is subject to confirmation and approval by the academic dean and vice president for academic services, Dr. Omro Todd. 15 In addition to selecting a chairman, each department chooses a representative to the faculty council. The faculty council elects five members to the faculty council executive committee. The council and the executive committee operate as 2 of 19 standing committees of the faculty to carry out its responsibilities. According to the faculty constitution and the faculty bylaws, these committees have been set up for a variety of purposes, including acting as advisory bodies to the College's administrators and representing the "voice of the Faculty" in College operations. All of the committees are composed primarily of elected faculty representatives. 16

The specific authority of the faculty concerning curriculum, course schedules and teaching loads, grading system and policies, admission and matriculation standards, degree and graduation requirements, budgetary matters, salary issues and grievance adjustment, and hiring, tenure, sabbaticals, terminations, and promotions is described below.

A. Curriculum

The faculty formulates the College's curriculum. The faculty constitution empowers it to "define the educational philosophy of this College," and to "establish and interpret the academic policies of the College." The faculty bylaws provide that "the Faculty shall have full responsibility for the design and implementation of the academic program of the College." It fulfills this duty through departmental decisionmaking which results in a recommendation regarding course offerings by the department's chairman to the faculty's curriculum study committee. ¹⁷ This committee undertakes a continuing review of all matters relating to curriculum and then makes recommendations to the faculty. ¹⁸ Ultimate approval of all additions or deletions

of courses rest with the faculty through the faculty council.

B. Course Schedules and Teaching Loads

Not only does the Thiel College faculty determine which courses will be offered, but it is also intimately involved in the technical aspects of setting up the course schedules and equitably dividing the teaching load. That is, it overses the "implementation" of the curriculum. Each chairman assigns classes, balances the size of classes, and coordinates the work among department members. The chairman's duties also include maintaining records of departmental faculty annual teaching loads. While Dr. Todd testified that it is the department chairman who determines who will teach which courses, Dr. John Nichols, head of the mathematics department, stated that, at least in his division, the class assignments are decided upon jointly with the faculty members.

C. Grading System and Policies

The bylaws provide that the faculty council supervises the overall academic performance of the College, including monitoring and analyzing student grade levels. There is also an academic standing committee, whose functions involve assisting the academic dean in maintaining the College's high standards of performance, examining the records of all probationary students to determine their continuing status at the College, and making recommendations to the academic dean or faculty regarding matters related to academic standards. ¹⁹ Further, the faculty constitution expressly states that it is the faculty's legislative duty to establish the requirements for retention in the College.

D. Admission and Marticulation Standards

Under the faculty constitution, the faculty establishes academic requirements for admission to the College. In addition, the bylaws provide that the faculty, through its academic standing committee, review all requests for readmission.

E. Degree and Graduation Requirements

The constitution and the record also reveal that it is the faculty which determines the requirements for obtaining all academic degrees and which certifies to the board of trustees, for its approval, those

¹⁶ Uncontradicted testimony in the record indicates that, in his 7 years in this position, Dr. Todd has never rejected a department's choice for chairman.

¹⁶ There is a faculty nominations committee which is responsible for preparing lists of nominees for vacancies on all standing committees. In addition the president and the academic dean of the college are ex officio members of all faculty committees when not specifically designated as voting members of those committees.

¹⁷ Each department also controls the subject matter of what is taught in each course.

Designated administrative membership on this committee is limited to the academic dean and an elected professional librarian. In addition to this committee, the interim term and special program committees of the faculty are involved in planning the College's curriculum. The interim term committee whose designated membership includes the academic dean, schedules the course offerings available for the 1-month session between the fall and spring terms, in cooperation with the academic dean,

the curriculum committee, faculty, and students, with the approval of the faculty council. The special program committee, on the other hand, investigates new courses of studies not within the jurisdiction of other committees.

¹⁹ The designated administrators on this committee include the academic dean, the assistant director of institutional data (records), the dean of students, and the director of advising and counseling.

students who are eligible for graduation. The bylaws also provide that the faculty executive committee is to consider student petition for exceptions to the College's academic requirements.

F. Budgetary Matters

The evidence indicates that the faculty is involved in the finances of the College from the departmental to the institutional level. It is the responsibility of the department chairmen, with the assistance of other members in their respective sections, to prepare the annual departmental requisition for appropriations, and the request for library purchases. Further, the chairmen make recommendations to the academic dean regarding such personnel actions as salary increases, promotions, dismissals, and the need for adjunct professors, which affect the overall financial picture of the College. Indeed, the academic dean's preparation of the annual academic budget is not undertaken until the chairmen's recommendations in the various abovementioned areas are transmitted to him. 20

The faculty also concerns itself with the financial matters of the College on the institutional level. It is, in fact, directed to do so by its constitution. The faculty is to participate with the administration and the board of trustees on matters dealing with the long-range financial and economic planning and the growth of the College. Further, the faculty's bylaws state that the institutional planning committee²¹ is involved in planning for the nonacademic future of the College. Moreover, the description of the functions of the faculty's committee on faculty salaries and fringe benefits sets out that at least one member of that committee "shall be present at all meetings when decisions are made regarding salary schedules, fee structure, budget and such other matters which would impact, overall, the financial status of the College." Further, "[M]embers of the committee shall be a party to any communications on matters of . . . finance and budget between board members and/or administrative personnel. . . ."

G. Salary Issues and Grievance Adjustment

The faculty salaries and fringe benefits committee each year reviews the current salary and benefits schedules, and further makes recommendations regarding these items to the faculty. If approved, these proposals are then transmitted to the College's administrators and ultimately to the board of trustees for action. The executive committee also is involved in salary issues in the event of an individual appeal from a salary determination. It is then the committee's responsibility to make a recommendation regarding this appeal to the academic dean and president.²²

As to grievances, in addition to the salary appeals just mentioned, the faculty's bylaws set forth a procedure to be followed if a problem involving a member of the teaching staff or the student body arises. Specifically, the process calls for a step-bystep approach to reach a satisfactory resolution of the grievance. With regard to faculty protests, these steps are to deal with the offending party directly, then to take the issue to the department chairman involved, then to the academic dean and/or the faculty council, then to appeal to the president of the college, and finally to the board of trustees. The approach with regard to student grievances is identical with the exception of the participation of the faculty council executive committee, instead of the council as a whole, if the academic dean cannot resolve the problem.

H. Decisions Regarding Hiring, Tenure, Sabbaticals, Terminations, and Promotions

A review of the faculty's constitution, its bylaws, and the record clearly shows that the faculty participates substantially in the personnel decisions involving its members. In delineating the faculty's role in the decisionmaking processes of the College, the constitution specifically states that the faculty shall "participate in the definition of policy concerning its professional status."23 The bylaws further explain the nature of this participation. The department chairmen are responsible for interviewing candidates and, after consulting with their discipline's professors, for making the appropriate recommendations to the academic dean. The chairmen also make recommendations to the dean regarding salary increases, promotions, continuation of a teacher on the staff, dismissal, and tenure. The executive committee must also review the eligibility of individual faculty members for promotions, contract renewals, tenure, sabbaticals or leaves of absence, or continuation after retirement age has been reached, and must make the proper recommendations to the academic dean. The dean is precluded

²⁰ Dr. Nichols, the mathematics department chairman, testified that, while his budget requests could be denied by an administrative officer, his department has always received its requested funds. The administration has asked on occasion, however, that the department make certain cuts in its budget in view of the College's intermittent financial problems. This has been done where possible.

²¹ This committee's membership also includes a member of the board of trustees, a member of the administrative cabinet, and an alumnus.

²³ Record testimony by Dr. Nichols indicates that department chairmen may indirectly affect levels of pay. He stated that, if an outstanding evaluation is given to a teacher, such a recommendation may result in a higher level of remuneration for that individual.

²³ The teachers are also directed to participate in the selection process for hiring the president of the College, the academic dean, and the college pastor.

from taking action in any of the above-mentioned areas until he receives the recommendations of the department chairmen and/or the executive committee. Moreover, the bylaws list the basic guidelines for employment, general and specific criteria for promotion and tenure, the procedures for evaluation, and even sample evaluation forms from the students, fellow faculty members, department chairmen, and administrators. Further, the faculty council monitors the student evaluations of the faculty, and all of the data accumulated by the above evaluations is considered by the executive committee in its decisionmaking procedures.²⁴

The record testimony also establishes the effective nature of faculty recommendations concerning promotions, tenure, sabbaticals, and hiring and firing. In Dr. Todd's 7 years as academic dean there have been 20 promotions, and Dr. Todd concurred in all but 1 of the executive committee's recommendations. Further, the evidence shows that Dr. Todd has followed all of the committee's recommendations on tenure.25 The chairmen and the department members advertise vacancies, interview applicants, and then decide who will fill each slot. After consultation with Dr. Todd, this recommendation is then made in writing to him. According to Dr. Todd, such a recommendation to hire or not to hire is always followed. Further, while Dr. Nichols indicated that his recommendation in this regard could be reversed, he also stated that during his tenure as mathematics department chairman his three positive recommendations resulted in job offers to the applicants involved. As to firing, the procedure begins either with a termination recommendation from the department chairman, if a faculty member is involved, or with such a suggestion from the faculty, if the chairman is the subject of the complaint. Dr. Todd testified, without contradiction, that with regard to the former the result has always been termination. The evidence shows that on at least one occasion a department faculty's negative recommendation as to its chairman also ended with his dismissal.

As stated previously, in Yeshiva University the Supreme Court decided that the employer's full-time faculty members were managerial employees who were not covered under the Act. The Court found that the faculty at each of the university's schools effectively determined its curriculum, grading system, admission and matriculation standards,

academic calendars, and course schedules, and that its authority extended beyond "strictly academic concerns." ²⁶ Thus, the Court found that Yeshiva University's teaching staffs made recommendations in every case of faculty hiring, tenure, sabbatical, termination, and promotion and that the "overwhelming majority" ²⁷ of such recommendations were followed by the administration. In addition, the Court found some faculties made "final decisions" regarding the "admission, expulsion, and graduation of individual students," and that others decided "questions involving teaching loads, student absence policies, tuition and enrollment levels, and in one case the location of a school." ²⁸

The Court noted that, under the definition of N.L.R.B. v. Textron, Inc., Bell Aerospace Co. Div., ²⁹ managerial employees are those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." The Court stated that, in a school like Yeshiva University, the faculty's professional interest "cannot be separated from those of the institution," and that the teachers exercised authority "which in any other context unquestionably would be managerial." In particular,

Their authority in academic matters is absolute. They decide what courses will be offered, when they will be scheduled, and to whom they will be taught. They debate and determine teaching methods, grading policies, and matriculation standards. They effectively decide which students will be admitted, retained, and graduated. On occasion their views have determined the size of the student body. the tuition to be charged, and the location of a school. When one considers the function of a university, it is difficult to imagine decisions more managerial than these. To the extent the industrial analogy applies, the faculty determines within each school the product to be produced, the terms upon which it will be offered, and the customers who will be served. 32

Although the Court concluded that the analogy between the university and industrial setting could not be complete, it further stated that "[i]t is clear

²⁴ As budgetary considerations must, of necessity, be involved in personnel decisions regarding the faculty, the faculty salaries and fringe benefits committee, whose duties are set forth more fully in sec. G, supra, is at least tangentially involved in the determinations in this area as well.

There is no evidence of the track record regarding sabbaticals. However, Dr. Todd did indicate that he reviews recommendations regarding such leaves of absence in the same manner that he does those concerning promotion and tenure.

^{* 444} U.S. at 677.

²⁷ Id. ²⁸ Id.

^{20 416} U.S. 267 (1974).

³⁰ Id. at 288.

^{31 444} U.S. at 686.

³² Id. In fn. 23 of its decision, the Court stated that the record revealed the "predominant role" played by the faculty in decisions regarding hiring, tenure, sabbaticals, termination, and promotion. The Court further asserted that, in view of the supervisory as well as mangerial characteristics of such personnel determinations, it need not rely primarily on these factors, because it did not reach the issue of supervisory status.

that Yeshiva and like universities must rely on their faculties to participate in the making and implementation of their policies."³³

We conclude that the Thiel College faculty makes decisions and effective recommendations in the overwhelming majority of critical areas relied upon by the Supreme Court in Yeshiva University. 34 The faculty constitution and the faculty bylaws authorize the professors to play this role, and the record establishes that, through the faculty council, the faculty executive committee, and other faculty committees, such power is actually exercised.

Like the teachers in Yeshiva University, the faculty herein controls the College's curriculum; each department makes recommendations regarding course offerings (and course content) which are reviewed by the faculty curriculum study committee, and which are ultimately approved or disapproved by the faculty through the faculty council. It also implements the curriculum in setting up course schedules and dividing the teaching load among the various departments' professors. Through the faculty council and its academic standing commit-

tee it supervises the overall academic performance of the College, including grade levels and academic standards. The faculty also determines who will be admitted and readmitted to the College; it establishes the academic requirements for obtaining degrees; and it certifies to the board of trustees, for its approval, those students eligible for graduation. In addition, each department prepares its own annual budget, which apparently is normally accepted by the College. The faculty is also involved in long-range financial and economic planning for the College. The faculty participates in setting its own salary and benefit levels, and adjusts faculty and student grievances. Finally, the Thiel College's faculty makes effective decisions on hiring, tenure, sabbaticals, terminations, and promotions.

Although, as in Yeshiva, ultimate authority is vested in the board of trustees, we conclude that the faculty of Thiel College, like that of Yeshiva University, does not have professional interests separate from those of its employer, and that it necessarily plays a large role in operating the College. Thiel College, like Yeshiva University, "requires faculty participation in governance because professional expertise is indispensable to the formulation and implementation of academic policy," and therefore must depend upon its teaching staff "to participate in the making and implementation" of its policies. 35

We shall therefore dismiss the petition.

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

³³ 444 U.S. at 689. The Court also limited its holding by stating that the managerial exclusion would only apply to those professional employees whose activities "fall outside the scope of duties routinely performed by similarly situated professionals." *Id.* at 690. Therefore, those teachers who only "determine the content of their own courses, evaluate their own students, and supervise their own research" would be within the Act's protection. 444 U.S. at 690-691, fn. 31.

³⁴ There is no specific evidence concerning whether the Thiel College teachers are involved in decisions regarding academic calendars, student absence policies, enrollment levels, tuition, and the location of a school. However, art. II,B, of the faculty constitution, set forth in full supra, would appear to empower the faculty to make decisions in these areas. In addition, the Court clearly indicated that the faculties of only some of the 10 schools of Yeshiva covered by the petition effectively determined questions in these areas. 444 U.S. at 677. Last, we do not regard faculty involvement or lack of involvement in these areas as vitally significant.

^{35 444} U.S. at 689.